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Pharmacy Law Brief: Exclusion of Practitioners from Federally Funded Health Programs

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Pharmacy Law Brief: Exclusion of Practitioners from Federally Funded Health Programs

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Question: I have read somewhere that the federal government has ratcheted up its level of activity with regard to excluding health professionals from health care programs that receive any federal funds, e.g., Medicare, Medicaid, TRICARE, programs for veterans, etc. What is that, are there implications for pharmacists and pharmacy and what can a practitioner who is “excluded” do to get reinstated?

Response: A number of federal statutes enacted over the years starting in 1977 have created a legal prohibition on payment by federal health care programs for items or services either furnished by an “excluded person” or at the request of such an individual, e.g., a prescription issued by an excluded provider. This applies whether the federal program is funded wholly (think TRICARE) or in part (think Medicaid) with federal funds.

Program exclusion may be directed at any person who submits false or fraudulent claims for payment. Thus, this could include the owner of a pharmacy seeking reimbursement or an employee pharmacist who initiated the claim. There also are potential civil monetary penalties that can be directed at entities, e.g., pharmacies, that employ individuals who are currently subject to exclusion. It has been reported that as of April 2013, there were 51,000 individuals and 3,000 business entities under exclusion.

But the implications are even more expansive. No federal health care program payment may be made for items or services furnished on the prescription of an excluded practitioner. So if a prescription were issued by an excluded prescriber a pharmacy could not be reimbursed for that by a federal health program.

Does that mean the pharmacist needs to verify that each and every prescriber from whom prescriptions are received are not under an exclusion order? Payment could certainly be denied in such situations. One way to avoid liability for honoring an order from an excluded prescriber is to double

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check that the pharmacy’s computer system includes an edit for excluded prescribers at the point of dispensing.

Looking at an inpatient scenario, if a hospital employed an excluded pharmacist who dispensed medications to a Medicare beneficiary whose bill was covered under that program’s diagnosis-related group payment system, that bill would not be honored for payment. Moreover, that pharmacist would be open to penalties for violating his or her exclusion by causing a claim to be submitted for federal reimbursement during the period of exclusion.

Well, could an excluded pharmacist get around this by moving into an administrative or managerial role where, say, no direct dispensing activities occur? The answer is no. Excluded individuals are prohibited from furnishing such services if payment comes from federal health care programs. Nor could that excluded pharmacist limit his or her activities to inputting billing information or reviewing treatment plans. Those activities also would run afoul of the exclusionary order.

This author has received inquiries from pharmacists who have been subject to exclusion orders asking several questions. First is “what can I permissibly do while excluded?” The answer is, unfortunately, not much in pharmacy. One possibility might be a position with a poison control center that receives no federal funds. The second question is “What can I do to get out from under the five year exclusion order?” The answer to that, also unfortunately, is not much. Passage of time is pretty much the only remedy with the hope that programmatic reinstatement to eligibility will follow.

How can it be determined whether a particular individual is currently under an exclusion order? The website of the HHS Office of the Inspector General presents this information at <http://oig.hhs.gov/exclusions>.

Disclaimer: The information in this column is intended for educational use and to stimulate professional discussion among colleagues. It should not be construed as legal advice. There is no way such a brief discussion of an issue or topic for educational or discussion purposes can adequately and fully address the multifaceted and often complex issues that arise in the course of professional practice. It is always the best advice for a pharmacist to seek counsel from an attorney who can become thoroughly familiar with the intricacies of a specific situation, and render advice in accordance with the full information.
